IN THE

# Supreme Court of the United States

October Term, 1954

No. 203

FRANK LEWIS, *Petitioner*

v.

UNITED STATES OF AMERICA

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit affirming the judgment of the Municipal Court of Appeals for the District of Columbia was entered on June 10, 1954. A Motion to Stay the issuance of the Mandate for thirty days, to wit, until July 10, 1954, to enable this petitioner to make application to this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit was filed with that Court on June 16, 1954, and on June 23, 1954 that Court ordered the Mandate to be stayed to and including July 10, 1954. The jurisdiction of this Court is conferred by 28 U.S.C., 1254(1).

## QUESTIONS PRESENTED

(1) Does Chapter 27A of the Internal Revenue Code, 26 U.S.C., Section 3285 et seq. (Wagering Tax Act) as applied in the District of Columbia to this petitioner, contravene the Fifth Amendment of the United States Constitution?

(2) Is Chapter 27A of the Internal Revenue Code, 26 U.S.C., Section 3285 et seq. (Wagering Tax Act) as applied in the District of Columbia to this petitioner a legitimate exercise of the taxing power inasmuch as its provisions impose penalties in the guise of taxes?

(3) Do the provisions of Chapter 27A of the Internal Revenue Code, 26 U.S.C., Section 3285 et seq. (Wagering Tax Act) as applied in the District of Columbia to this petitioner contravene the provisions of the Fourth Amendment of the United States Constitution?

## CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

The pertinent texts of the foregoing are set out in the Appendix.

## STATEMENT OF THE CASE

By information filed by the United States in the Municipal Court for the District of Columbia on October 7, 1952, (R. 1-2), the defendant in this case is charged as follows:

> "Frank Lewis on December 13, 1951, and on diverse other days thereafter during the month of December, 1951, in the District of Columbia *engaged in the business of accepting wagers, by reason of such activity he was required by law to pay the occupational tax (wagering) of Fifty Dollars ($50.00) as imposed by Section 3290 of Internal Revenue Code,* he failed to pay said tax, all in violation of Section 3294(a) Internal Revenue Code: Title 26, U.S. Code, Section 3294(a) and Section 2707(b) Internal Revenue Code as made applicable by Section 3294(c) Internal Revenue Code." (Italics supplied)

On October 28, 1952, a Motion to Dismiss this Information was filed. (R. 6)

The Municipal Court for the District of Columbia entered an Order on July 24, 1953, sustaining the Motion to Dismiss (R. 5-27) and filed at that time a written Opinion. The United States filed a Notice of Appeal on August 3, 1953 (R. 28). An Agreed Statement of Proceedings was filed on August 24, 1953 (R. 28-29). The Municipal Court of Appeals for the District of Columbia entered an Order on November 6, 1953, reversing the Municipal Court for the District of Columbia and remanding the case (R. 34). At the same time, the Municipal Court of Appeals for the District of Columbia filed a written Opinion (R. 30-34).

On November 16, 1953, the defendant by his counsel filed a Petition for an Allowance of Appeal to the United States Court of Appeals for the District of Columbia Circuit. The transcript of the Record from the Municipal Court of Appeals for the District of Columbia was filed with the U. S. Court of Appeals for the District of Columbia Circuit on November 20, 1953. The Petition for an Allowance of Appeal was heard on December 23, 1953, and this appeal was allowed on December 24, 1953. The United States Court of Appeals for the District of Columbia on June 10, 1954, affirmed the judgment of the Municipal Court of Appeals for the District of Columbia (R. 37). A Motion to Stay the Issuance of the Mandate for thirty days, to wit, until July 10, 1954, to enable this petitioner to make application to this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the District of Columbia was filed with that Court on June 16 and on June 23, 1954, that Court ordered the Mandate to be stayed to and including July 10, 1954.

## ARGUMENT

The acceptance of wagers in the District of Columbia is wholly prohibited by Federal law.[1] Therefore, this is the first Petition for a Writ of Certiorari to be filed with this Court seeking a determination as to whether or not the provisions of the Wagering Tax Act and the criminal sanc-

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[1] *Arnstein* v. *United States*, 54 App. D.C. 199, 296 Fed. 946, cert. denied 264 U.S. 595; *Storey* v. *Rives*, 68 App. D.C. 325, 97 F. 2d 182, cert. denied, 305 U.S. 395; Act of June 25, 1948, c. 645, 62 Stat. 701, Title 18, U.S.C., Sec. 371 (Federal Conspiracy Statute) (p. 34); Act of March 3, 1901, 31 Stat. 1330, ch. 854, § 863; June 30, 1902, 32 Stat. 535, ch. 1329; Apr. 5, 1938, 52 Stat. 198, ch. 72, § 1, Title 22, D.C. Code, Sec. 1501. (prohibits lotteries) (p. 32), Act of April 5, 1938, 52 Stat. 198, ch. 72, § 2, Title 22, D.C. Code, Sec. 1502 (prohibits lotteries) (App. p. 6); Act of March 3, 1901, 31 Stat. 1330, ch. 854, § 864, Title 22, D. C. Code, Sec. 1503 (prohibits lotteries) (p. 32), Act of March 3, 1901, 31 Stat. 1331, ch. 854, § 869; May 16, 1908, 35 Stat. 164, ch. 172, § 3, Title 22, D.C. Code, Sec. 1508 (prohibits betting, gambling and making book on races or contests of any kind) (p. 33).

tions provided therein are constitutional as applied to persons engaged in the business of accepting wagers in the District of Columbia.

*United States* v. *Kahriger*, 73 S. Ct. 519, 345 U.S. 22, rehearing denied 345 U.S. 931, is not authority for the constitutionality of the provisions of the Wagering Tax Act as applied in the District of Columbia as in that case this Court merely passed on the validity of the Wagering Tax Act as applied to wagering activities *in the states.* This Court stated in the Kahriger case, supra, at page 512:

> "The wagering tax with which we are here concerned applies to all persons engaged in the business of receiving wagers *regardless of whether such activity violates state law.*" (Italics supplied)

The question before this Court as stated by the United States in its Brief in Kahriger, *supra,* at page 2 was "Whether the occupational tax provisions of the Revenue Act of 1951 (26 U.S.C., Supp. V, 3290) which levy a tax on persons engaged in the business of accepting wagers, and require such persons to register with the Collector of Internal Revenue, are unconstitutional *because incidental regulatory features of the registration section (26 U.S.C., Supp. V, 3291) infringe the police power reserved to the states.*" (Italics supplied) The question of the constitutionality of the Wagering Tax Act as applied in a federal jurisdiction which wholly prohibits wagering activities was never raised. In fact the United States in its Reply Brief filed in Kahriger, *supra,* stated at page 2 "*. . . the occupation taxed is unlawful only under state laws . . .*" and at page 3 "*. . . Wagering is doubtless unlawful in many states (perhaps in all but Nevada) but it is not forbidden by any Federal law. Thus the registration statement* in which the taxpayer is required to set forth his name, address and places of business, and the names and addresses of his agents or principals *does not call for a disclosure of information which will reveal a violation of federal law.*" The contrary is the fact in the District of Columbia.

This case arose in the District of Columbia by the filing of an information by the United States in the Municipal Court for the District of Columbia on October 7, 1952 (R. 1-2). In that information this petitioner was charged with engaging in the business of accepting wagers in the District of Columbia and by reason of such activity was required to pay the $50 tax required by the Wagering Tax Act[2] and violated this provision by failing to pay the $50 tax. A Motion to Dismiss was filed by this petitioner in the Municipal Court for the District of Columbia (R. 4-5) on the grounds that the Wagering Tax Act contravened the Fifth Amendment of the United States Constitution, imposed penalties in the guise of taxes and as elaborated in oral argument, also contravened the Fourth Amendment of the Constitution of the United States. The Municipal Court for the District of Columbia sustained the Motion to Dismiss, holding that the decision of this Court in the Kahriger case, *supra,* did not apply in the District of Columbia (R. 5-27). The Municipal Court of Appeals for the District of Columbia reversed the judgment of the Municipal Court for the District of Columbia (R. 34) and in its opinion pointed out its reluctance as a lower court to pass on the constitutionality of acts of Congress and went further to say that since the Kahriger opinion construed the act to require registration before entering the business of accepting wagers, and holding that such was valid and proper, it was not open to the Municipal Court to adopt a different construction. The United States Court of Appeals for the District of Columbia affirmed that decision (R. 37) holding that the lower appellate court was correct in view of *United States* v. *Kahriger, supra.*

It is submitted that the lower appellate courts erred in arriving at their conclusions and their error was committed by failing to consider the rationale which motivated this Court in arriving at its opinion in Kahriger, *supra.* It will be recollected that Kahriger was a defendant who had engaged in the business of accepting wagers in the State

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[2] 26 U.S.C. 3290. Pg. 29.

of Pennsylvania and failed to pay the $50 tax required by Section 3290, *supra*. In that case this Court, properly, and before passing on the validity of the $50 tax section, reviewed its prior decisions with respect to other taxing statutes and cited those decisions[3] as authority for its conclusion that the 10% tax imposed by Subchapter A of the Wagering Tax Act (Section 3285 et seq., Title 26, U.S.C.) was constitutional.

There is a basic and controlling distinction between the instant case and the cases relied on by this Court in Kahriger. *In each and every case so cited, the statutes construed therein by this Court imposed taxes on activities which were not illegal under any Federal law.* Even today, persons engaged in such activities are not subject to Federal prosecution if the required tax is paid and compliance be had with the regulations effectuating such statutes. But the wagering activities embraced by the provisions of the Wagering Tax Act are wholly prohibited by Federal laws to the fullest extent that the United States can proscribe such activities.[4] Absent a constitutional amendment such as the 18th Amendment, the Federal Government has no authority to either permit or prohibit wagering activities in the states. The Constitution, however, confers on Congress sovereign power over the District of Columbia[5] and this power has been exercised to prohibit all wagering activities.

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[3] License Tax Cases, 5 Wall. 462, 18 L. Ed. 497 (Tax on lottery tickets—no federal law prohibiting lotteries at that time); *Veazie Bank* v. *Fenno*, 8 Wall. 533, 19 L. Ed. 482 (Tax on paper money issued by state banks); *McCray* v. *United States*, 195 U.S. 27, 59, 24 S. Ct. 769, 777, 49 L. Ed. 78 (tax on colored oleomargarine); *United States* v. *Doremus*, 249 U.S. 86, 39 S. Ct. 214, 63 L. Ed. 493 and *Nigro* v. *United States*, 276 U.S. 332, 48 S. Ct. 388, 72 L. Ed. 600 (tax on narcotics); *Sonzinsky* v. *United States*, 300 U.S. 506, 57 S. Ct. 554, 81 L. Ed. 772 (tax on firearms); *United States* v. *Sanchez*, 340 U.S. 42, 71 S. Ct. 108, 95 L. Ed. 47 (tax on marihuana).

[4] See Footnote 1.

[5] Article I, Section 8, Clause 17. (Pg. 44)

To state the proposition in another manner; payment of the taxes and registration and filing of returns pursuant to the statutes reviewed in the cases relied on by this Court in Kahriger give to the taxpayers permission to engage in those activities insofar as the Federal Government is concerned. In obeying those laws no revelation of a Federal crime is required. As was pointed out in the License Tax Cases, *supra,* quoted with approval by this Court in Kahriger at page 512, "The granting of a license, therefore, must be regarded as nothing more than a mere form of imposing a tax and of implying nothing except that the licensee shall be *subject to no penalty under national law if he pays it.*" (Italics supplied) To the contrary in the instant case. Compliance with the provisions of the Wagering Tax Act would not exempt this petitioner from any penalties provided by the Federal laws prohibiting wagering in the District of Columbia. Section 3297, Title 26, U.S.C. (Wagering Tax Act) Pg. 31 specifically negates any such conclusion because that section states in part:

> "Sec. 3297. Applicability of Federal and State Laws.
> "The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States. . . ."

It is obvious that compliance with the provisions of the Wagering Tax Act would assure prosecution for the violation of other Federal laws by virtue of the notice which would be given to the United States Attorney by the posting provisions, Sections 3275 (Pg. 47) and 3293 (Pg. 30) and Tr. Dec.[6] which makes these excise returns avail-

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[6] T. D. 4929 Pg. 26 Int. Rev. Cumulative Bulletin:
Sec. 463 C. 32 Pg. 40.
Sec. 463 C. 33 Pg. 40.
Sec. 463 C. 34 Pg. 41.
T. D. 5138 Int. Rev. Cumulative Bulletin, 1942-17-11074 Pg 99:
Sec. 458, 611 Pg. 43.

able to the prosecuting authorities. Therefore, this petitioner was not required to comply with the provisions of the Wagering Tax Act by filing the returns required for if he had done so he would have waived his privilege against self-incrimination. In order to avail one's self of the privilege against self-incrimination a person must invoke the privilege at the first apprehension of danger, that is at the first moment when information is called for which if given by him would incriminate or tend to incriminate him of a violation of Federal law. In the case of *United States* v. *St. Pierre,*[7] the court said:

> "The time for a witness to protect himself is when the decision is first presented to him;" . . .,

The time when the decision is first presented to him differs according to the circumstances. As the court stated in *United States* v. *Pechart:*[8]

> ". . . It is conceded in the record that the defendants were men engaged in gambling and other related so-called racketeering activities. Because of that fact, are they to be deprived of the right to exercise their constitutional privileges?
>
> "Preliminarily to a decision on the fact, I think it may be pertinent and appropriate to state that if the constitutional privilege becomes unavailing to a person because of his occupation, it is but a short step to make it unavailing to a man because he is a Republican or Democrat, or a Catholic or a Jew. The privilege is one that is exercisable by any person provided that the facts and circumstances warrant its exercise." • • •
>
> "Furthermore, the case is not precedentially of any value to us *because the matter of the exercise of privilege may be different in given circumstances, at a different time, and in a different Forum and where different issues are present.* Every case where the exercise of the privilege against self-incrimination is sought to be availed of must be determined with respect to the facts and circumstances of that particular case."

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[7] *United States* v. *St. Pierre,* 132 F. 2d 837, writ dismissed, 63 Sup. Ct. 910, 319 U. S. 41.

[8] *United States* v. *Pechart,* 103 F. Supp. 417, 419.

Where the questions call for answers incriminatory on their face there is no burden on the witness to show special circumstances why the answers called for would be incriminatory.[9] Where they are not incriminatory on their face, the person must show some tangible and substantial probability that his answers to such questions would tend to incriminate him. It is then for the court to finally determine whether incrimination is reasonably possible from any answer the witness may give, but, if such possibility exists the privilege bars compulsory disclosure of any fact that would tend to incriminate him.[10]

It is submitted that this petitioner properly exercised his privilege against self-incrimination by remaining silent and refusing to comply with Sec. 3291, *supra*, and furnishing the information required by Sec. 3291 and Form 730 (Pg. 45-46) because the questions call for answers which on their face incriminate or tend to incriminate in the District of Columbia.

In *Blau* v. *United States*, 340 U. S. 159, at page 160, 71 Sup. Ct. 223, 224, this Court stated:

> "Whether such admissions by themselves would support a conviction under a criminal statute is immaterial. Answers to the questions asked by the grand jury would have furnished a link in the chain of evidence needed in a prosecution of petitioner for violation of (or conspiracy to violate) the Smith Act. Prior decisions of this Court have clearly established that under such circumstances, *the Constitution gives a witness the privilege of remaining silent.*" (Italics supplied)

All that is required in invoking the privilege against self-incrimination is that the answer might tend to incriminate or might furnish a link in the chain of evidence which

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[9] *United States* v. *Raley*, 26 F. Supp. 495, 496 (D. C. 1951).

[10] *Estes* v. *Potter*, 183 F. 2d 865, 868, Cert. Denied 81 S. Ct. 356, 340 U. S. 920.

might ultimately incriminate.[11] If a witness having the right to invoke the privilege under such circumstances fails to so do and furnishes the information called for, such person waives the privilege.[12]

An examination of the provisions of the Wagering Tax Act in the order in which they were reviewed by this Court in Kahriger is deemed most appropriate. This requires first of all an examination of the so-called 10% tax section, Section 3285, supra, Subchapter A. Contrary to popular belief, all persons engaged in wagering activities are not liable for the 10% tax imposed by Subchapter A. 26 U.S.C., Sections 3285 (b)(2) and Subsection (e) exempt certain types of wagering activities, for example, poker games, roulette games, crap games, blackjack and the like are not subject to the 10% tax. Accordingly, those persons engaging in the exempted type of wagering activities cannot be required to pay the $50 tax provided by Section 3290 solely because that tax is only owing and due from persons who are liable for the 10% tax. Section 3290 reads as follows:

> "Sec. 3290. Tax.
>
> "A special tax of $50 per year shall be paid by each person *who is liable for tax under subchapter* A or who is engaged in receiving wagers for or on behalf of any person so liable." (Italics supplied)

Obviously there must be a liability for the 10% tax before there is a liability for the $50 tax and if persons are not liable for the 10% tax they cannot be held to be liable for the $50 tax.

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[11] *United States* v. *Burr*, 25 Fed. Cases, pages 38, 40, No. 14,692e. *Hoffman* v. *United States*, 71 S. Ct. 814, 818. *Blau* v. *United States*, 340 U. S. 159.

[12] *Rogers* v. *United States*, 71 S. Ct. 438. *United States ex Rel. Vajtauer* v. *Commissioner*, 47 S. Ct. 302, 273 U. S. 103. *United States* v. *Murdock*, 281 U. S. 141. *United States* v. *Monia*, 317 U. S. 424.

As to those activities which are not exempt from Sections 3285(b)(2) and 3285(e), a reading of Section 3285(d) defines the persons who are liable for the 10% tax. Section 3285(d) reads as follows:

> "Sec. 3285. Tax.
>
> "(d) Persons liable for tax. Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery."

To ascertain who is liable for the 10% tax requires a determination of what is meant by the words "engaged in the business." This is a phrase of art commonly defined as requiring acts of business to be conducted, prosecuted and continued. A single or occasional disconnected act does not constitute engaging in business.[13] Therefore, several wagers must be accepted before a person can be said to be engaged in the business of accepting wagers. Tr. Reg. 132, Sec. 325.21 (Pg. 35). No matter how narrowly Section 3285(d) is construed, at least one wager must be accepted before a person can be liable for the 10% tax. (Tr. Reg. 132, Sec. 325.24 (Pg. 35)). The Bureau of Internal Revenue by Treasury Reg. 132, Section 325.25 (Pg. 36) states when the 10% tax attaches. That Section reads as follows:

> "Sec. 325.25. When tax attaches.
>
> "(a) The tax attaches when (1) a person engaged in the business of accepting wagers with respect to a sports event or a contest, or (2) a person who operates a wagering pool or lottery for profit, *accepts a wager or contribution from a bettor.* In the case of a wager or credit, the tax attaches whether or not the amount of the wager is actually collected from the bettor." (Italics supplied)

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[13] *Hazen et al.* v. *National Rifle Assn. of America, Inc.*, 101 F. 2d 432, 439.
Black's Law Dictionary, 3d Ed. 1944, p. 260.

The Bureau of Internal Revenue has also by Treasury Reg. 132, Section 325.42, Subsection (b), (Pg. 39) defined the words "commencing business" appearing in Section 3271 (Pg. 43), as "*the initial acceptance of a wager by a person liable* for the *10% excise tax . . .* " (italics supplied).

Sec. 3285(d) provides further that each person shall pay the tax on all wagers *placed with him or placed in a pool or lottery.* Obviously, the tax cannot be compelled to be paid on wagers which have not been placed. The 10% tax has to have at least one wager on which to attach. It cannot fall on a vacuum.

It has been shown that acceptance of even one wager in the District of Columbia is a Federal crime. From this fact it must be concluded that the 10% tax imposed by Subchapter A is unconstitutional and there are two uncontrovertable arguments in support of this assertion.

First, the 10% tax must be paid by the taxpayer on the last day of each month[14] at which time the taxpayer must file a form denominated "Tax on Wagers" (Pgs. 45-46). A reading of this return discloses that all of the questions are incriminatory on their face and are offensive. Therefore, the rule enunciated by this Court in *United States* v. *Sullivan*, 274 U.S. 259, cited by this Court in Kahriger, does not apply. This requirement which compels a person to file this return on the last day of each month constitutes compulsory filing of monthly reports admitting Federal crimes which had been committed by the taxpayer, to wit, the acceptance of wagers in the District of Columbia in violation of Federal law proscribing such activities. But the Fifth Amendment provides that no person shall be compelled to be a witness against himself. Therefore, this section which deals with and can only deal with past acts, namely, the payment of a tax on wagers which have been accepted and the filing of a return admitting that fact contravenes the Fifth Amendment and is unconstitutional.

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[14] T.R. 132 Sec. 325.30 (Pg. 36).
T.R. 132 Sec. 325.32 (Pg. 37).

Secondly, having shown that at least one wager must be accepted before there is any liability for the 10% tax, it is obvious that to successfully collect and retain the taxes alleged to be due the United States would have to claim and ultimately prove that this petitioner had accepted at least one wager. But such proof would constitute proof of a commission of a Federal offense. There are no exceptions within the Federal jurisdiction, to wit, the District of Columbia, whereby a person is licensed to engage in wagering activities. All such activities are prohibited by Federal law. This Court has repeatedly held that where evidence of the commission of a Federal offense is essential to the imposition of a tax it lacks the ordinary characteristics of a tax and is a penalty and not a legitimate exercise of the taxing power.[15] In the most recent case decided on this point, this Court in *United States* v. *Sanchez*, 340 U.S. 42, 71 S. Ct. 108, 110, in upholding the validity of the Marihuana Tax Act found that tax to be valid because it stated:

> "Second. *The tax levied by Sec. 2590(a)(2) is not conditioned upon the commission of a crime. The tax is on the transfer of marihuana* to a person who has not paid the special tax and registered. *Such a transfer is not made an unlawful act under the statute.* Liability for the payment of the tax rests primarily with the transferee; but if he fails to pay, then the transferor, as here, becomes liable. It is thus the failure of the transferee to pay the tax that gives rise to the liability of the transferor. *Since his tax liability does not in effect rest on criminal conduct, the tax can be properly called a civil rather than a criminal sanction* . . ." (Italics supplied)

To the contrary in the instant case. It is submitted that the foregoing arguments clearly show the unconstitutionality of the 10% tax as applied to this petitioner in the

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[15] *Lipke* v. *Lederer* 259 U.S. 557, 561-562
*Regal Drug Corp.* v. *Wardell* 260 U.S. 386
*U. S.* v. *LaFranca* 282 U.S. 568, 572

District of Columbia and distinguish this case from Kahriger, *supra*, where the Court upheld the validity of the 10% tax as applied to persons engaged in wagering activities in the states.

It is interesting to note that the United States has not charged this petitioner with failing to pay the 10% tax for which he is liable if the 10% tax section, Section 3285, is constitutional and if the petitioner accepted wagers. By failing to so charge this petitioner, the United States has sought to avoid a determination of the validity of the 10% tax section as applied in the District of Columbia. But this Court in Kahriger recognized the necessity of first passing on the validity of the 10% tax section before passing on the validity of the $50 tax section even though Kahriger, like this petitioner was not charged with violating the 10% tax section.

Following further the rationale of this Court in Kahriger, it is now necessary to turn to the consideration of the $50 tax section, Section 3290, supra, with which provision this petitioner has been charged criminally with failing to comply. Immediately an entirely different situation confronts this Court then it did when it arrived at this point in Kahriger. When this Court turned to a consideration of the $50 tax section in Kahriger, supra, it had theretofore concluded that the 10% tax which is the substance of the Wagering Tax Act was constitutional as applied in the states. Having so found, this Court found nothing offensive in the $50 tax or the registration statement which must accompany its payment stating that all the latter was designed to do was to aid in the collection of the 10% tax. (Kahriger, p. 515) But it has been shown that this petitioner is not under any obligation to pay the 10% tax. Since, however, liability for the payment of the $50 tax required by Section 3290 is predicated on a liability for the 10% tax this petitioner was under no constitutional obligation to pay the $50 tax and register contemporaneously with such payment. That this is true is apparent from a rereading of the $50 tax section which reads as follows:

> "A special tax of $50 per year shall be paid by each person *who is liable for tax under subchapter A* or who is engaged in receiving wagers for or on behalf of any person so liable."

It is obvious that liability for the 10% tax is the *sine qua non* for liability for the $50 tax. T.R. 132, Sec. 325.41 (Pg. 38). Where there is no liability for the 10% tax either by virtue of the exemptions in the 10% tax section or because the 10% tax is unconstitutional as applied in a Federal jurisdiction there is no liability for the $50 tax. Therefore, even if this Court were to adopt the distorted construction of the $50 tax section placed on that section by the Municipal Court of Appeals for the District of Columbia, to wit, that the $50 tax must be paid before the acceptance of a wager, there still would be no violation of that section by this petitioner. This petitioner would not in the future be liable for the 10% tax because it is unconstitutional as applied to him. Therefore, even if the $50 tax section were to be rewritten to provide that a special tax of $50 shall be paid by each person who is going to be liable for the 10% tax, this petitioner still would not be under any constitutional obligation to comply with that provision because he will never be liable for the 10% tax.

There is still an additional reason why this petitioner was not required to pay the $50 tax even if the $50 tax section were to be interpreted to mean that the $50 tax must be paid prior to engaging in the business of accepting wagers. As the Municipal Court for the District of Columbia pointed out (R. 11-12):

> "Even if, for the sake of argument, it were to be admitted that this contention in general is sound, I feel it would fall in the District of Columbia by the virtue of the criminal sanctions that can be imposed under Section 371 of Title 18, U.S.C. For even assuming that the payment of the tax and registering would not compel a confession of past illegal substantive acts, nevertheless if two or more persons conspired to violate any of the anti-gambling provisions of the District of Columbia and in pursuance of that conspiracy one of the

> conspirators applied for a tax stamp, such an act would be an overt act in furtherance of the conspiracy and sufficient to sustain a conviction."

Since, therefore, a distorted construction of the $50 tax section does not render that section applicable to this petitioner, this Court should not distort its plain and obvious meaning as did the lower appellate courts. The lower appellate courts would have this Court read the $50 tax section as follows:

> "A special tax of $50 per year shall be paid by each person * * * "

But the statute contains the words sought to be stricken. Words could not be found which were clearer than those used in this section, namely, that the tax of $50 shall be paid by those liable for the 10% tax which means those who have accepted at least one wager. (T.R. 132, Secs. 325.50, 325.51, 325.52, 325.53, 325.54, Pgs. 39-41) The Congress itself in its committee report affirms this statement for it said:

> "The committee conceives of the occupational tax as an integral part of any plan for the taxation of wagers and as essential to the collection and enforcement of such a tax. Enforcement of a tax on wagers frequently will necessitate the tracing of transactions through complex business relationships, thus requiring the identification of the various steps involved. For this reason, *the bill provides that a person who pays the occupational tax must, as part of his registration, identify those persons who are engaged in receiving wagers for or on his behalf, and, in addition, identify the persons on whose behalf he is engaged in receiving wagers.*" (H. Rep. 586, 82d Cong., 1st Sess., p. 60; S. Rep. 781, 82d Cong., 1st Sess., p. 118) (Italics supplied)

It is submitted that the lower appellate courts misinterpreted the language of this Court at page 515 wherein it stated that Kahriger was not compelled by the registration provisions of the Wagering Tax Act to confess to acts already committed but was merely informed by the statute

that in order to engage in the business of wagering in the future he must fulfill certain conditions. All that this Court could have meant by that statement was that compliance with the registration provisions would not compel Kahriger to admit any violation of any existing Federal law in Pennsylvania nor compel him to admit any violation of state law which he had committed prior to the effective date of the Wagering Tax Act.[16] Therefore, the Federal Government could require Kahriger to pay the $50 tax and register. *But not this petitioner.*

A brief comment is deemed proper with respect to the closing sentence of the Opinion of the United States Court of Appeals for the District of Columbia wherein it said:

> "Of course, Congress may tax what it also forbids." (R. 36)

citing *United States* v. *Statoff*, 260 U.S. 477, as authority. It is submitted that the United States Court of Appeals for the District of Columbia completely misconstrued that language which was taken out of context. In the *Statoff case, supra,* the language set forth at page 480 relies on the case of *United States* v. *Yuginovich*, 256 U.S. 450, 464. But the United States Court of Appeals for the District of Columbia overlooked the fact that the tax that was being referred to was the basic production tax on liquor *whether or not legally or illegally* manufactured. In the Yuginovich case this Court made a point of the fact that liquor could be manufactured for non-beverage purposes (Pg. 480) and all that the National Prohibition Act[17] prohibited was manufacture, etc. of intoxicating liquor for beverage purposes. This Court never upheld the so-called double tax applicable only to illegal manufacture. *Lipke* v. *Lederer*, 259 U.S. 557. This is clearly shown in *United States* v. *One Ford Coupe*, 272 U.S. 321, wherein this Court stated:

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[16] Treasury Reg. 132, Section 325.40 (Pg. 38).

[17] 41 Stat. 305 (Pg. 44).

"With respect to the character of the impositions called taxes there is nothing in either the Revenue Acts or the Prohibition Act which makes any distinction between the product of legal and illegal distillation. The Acts left in effect the basic tax of $2.20 per gallon, which was and is a true tax on the product, whether legally or illegally distilled, and added to it the additional amounts in case of illegal distillation or diversion to illegal uses. These additional amounts also are called taxes by Congress, and were understood by it to be such. Whether they were intrinsically penalties and should be treated as such we need not determine. The basic tax of $2.20 a gallon on liquor illegally produced is not imposed because of illegality, but despite of it. . . ."

This question was further considered in *United States* v. *La Franca*, 282 U.S. 568, wherein this Court stated:

"By § 35, supra, it is provided that upon evidence of an illegal sale under the National Prohibition Act, a tax shall be assessed and collected in double the amount now provided by law. This, in reality, is but to say that a person who makes an illegal sale shall be liable to pay a 'tax' in double the amount of the tax imposed by preexisting law for making a legal sale, which existing law renders it impossible to make. A tax is an enforced contribution to provide for the support of government; *a penalty, as the word is here used, is an exaction imposed by statute as punishment for an unlawful act.* The two words are not interchangeable, one for the other. No mere exercise of the art of lexicography can alter the essential nature of an act or a thing; and if an exaction be clearly a penalty it cannot be converted into a tax by the simple expedient of calling it such. That the exaction here in question is not a true tax, but a penalty involving the idea of punishment for infraction of the law is settled by Lipke v. Lederer, 259 U.S. 557, 561-562. See also Regal Drug Corp. v. Wardell, 260 U.S. 386. There is nothing in United States v. One Ford Coupe, 272 U.S. 321, or Murphy v. United States, 272 U.S. 630, to the contrary." (Italics supplied)

It is clear that all that this Court held in the Prohibition Act cases, decided by it and referred to hereinbefore, was that the basic production tax was a true tax in that it applied to the manufacture of liquor which was licensed as well as so-called bootleg whiskey. But this Court also held that where a tax was imposed solely on illegal manufacture, that is bootleg whiskey it no longer was a tax but was a penalty and was not a legitimate exercise of the taxing power. An identical situation exists in the present case inasmuch as the Federal Government has to the fullest extent of its authority wholly prohibited the wagering activity sought to be taxed.

Further, it should not be forgotten that Section 35 of the National Prohibition Act provides in part (Pg. 44):

> "No liquor revenue stamps or tax receipts for any illegal manufacture or sale shall be issued in advance . . ."

The Congress that enacted the National Prohibition Act apparently foreseeing the situation in which this petitioner presently finds himself obviated this situation by eliminating the provision from the old revenue act providing for registration and the payment of tax to be evidenced by revenue stamps. However, the Congress which enacted the Wagering Tax Act apparently did not have that much foresight.

One further point should be called to this Court's attention and that is the fact that the provisions of the Wagering Tax Act contravene the Fourth Amendment. It is submitted that Sections 3275 (Pg. 47) and 3293 (Pg. 30) of Title 26, U.S.C. contravene the provisions of the Fourth Amendment. It is well settled that probable cause for issuing a search warrant is less than proof of guilt.[18] As was stated in the Dumbra case at page 441:

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[18] *Dumbra* v. *United States*, 268 U.S. 435; *Steele* v. *United States*, No. 1, 267 U.S. 498; cf. *Brinegar* v. *United States*, 338 U.S. 160; *Carroll* v. *United States*, 267 U.S. 132.

> "In determining what is probable cause, we are not called upon to determine whether the offense charged has in fact been committed. We are concerned only with the question whether the affiant had reasonable grounds at the time of his affidavit and the issuance of the warrant for the belief that the law was being violated on the premises to be searched; and if the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant."

Compliance with the provisions of Chapter 27A, supra, would result in a posting by the Collector of Internal Revenue pursuant to the provisions of Section 3275, Title 26, U.S.C. (Pg. 47). This section would require the Collector to post in a conspicuous place in his office, for public inspection, the name of this defendant and the time, place and business for which the special tax was paid. This would immediately put the United States Attorney for the District of Columbia on notice that this defendant was engaged in activities in violation of Federal law in this District, and he could immediately obtain the returns filed and use them in a prosecution against this defendant or at least obtain leads from them whereby he could prosecute him.[19] Further, Section 3293, *supra*, would require this defendant to post the special tax stamp in his place of business under penalty of Federal law if he fails so to do.[20] The contravention of the Fourth Amendment is made quite apparent by this section for the very business for which the special tax stamp is issued and required to be posted is unlawful in the District of Columbia.[21] Since compliance with either or both of the foregoing sec-

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[19] Treas. Dec. 4929, Secs. 463C. 32, 463C. 33, 463C. 34, Pgs. 41-42; Treasury Dec. 5138, Sec. 458. 611. Pg. 43.

[20] Treasury Regs. 132, Section 325. 53. Pg. 41.

[21] *United States* v. *Yuginovich*, *supra*, page 464.

tions would lay a predicate for the issuance of a search warrant, this compulsion constitutes a device to obtain information under the guise of statutory authority so that thereafter the United States could assert "probable cause" for the issuance of a search warrant and subsequently contend that any search or seizure pursuant thereto was valid.

## CONCLUSION

(1) Since the acceptance of wagers in the District of Columbia is wholly prohibited by Federal law, the 10% tax sought to be imposed on each wager accepted by persons engaged in the wagering business is unconstitutional.

(a) This tax contravenes the Fifth Amendment in that compliance with the pertinent provisions compel an admission of the commission of prior Federal crimes during the month in question.

(b) The tax is a penalty in the guise of a tax and not a true tax in that proof of a commission of a Federal crime in the District of Columbia, to wit, the acceptance of a wager is a prerequisite to liability for the 10% tax. Therefore it is not a legitimate exercise of the taxing power.

(c) Since Section 3290, supra, the $50 tax section, only requires those persons liable for the 10% tax to pay the $50 tax and register, this petitioner did not violate the $50 tax section by failing to pay as he was not liable for the 10% tax.

(2) (a) The $50 tax section, Section 3290, supra, is of itself unconstitutional in that it contravenes the Fifth Amendment and also imposes penalties in the guise of a tax as it is grounded on a liability for the 10% tax. As has been shown, to be liable for the 10% tax, at least one wager must be accepted. Therefore, the $50 tax and registration contemporaneous therewith would compel the admission of at least one past Federal crime, to wit, the acceptance of a wager in the District of Columbia.

(b) Even if the $50 tax section, Section 3290, supra, is construed by this Court to require payment of the $50 tax and registration contemporaneous therewith prior to the acceptance of a wager, that Section is still only applicable to persons who in the future will be liable for the 10% tax. In the District of Columbia this petitioner will never be liable for the 10% tax. Therefore, he was not liable for the $50 tax.

(3) Sections 3275 and 3293 contravene the Fourth Amendment in that they are devices to furnish the prosecuting officials with information to assert as a predicate for support of the requirement of "probable cause" required for the issuance of a valid search warrant.

(4) The decision of the United States Court of Appeals for the District of Columbia Circuit in this case if not reversed bestows in advance a judicial blessing on all amendments by the Congress of the United States to existing Federal criminal statutes providing for the imposition of excise taxes on illegal activities as well as requiring each violator of such statutes to file monthly returns confessing Federal crimes. The result would be the deletion of the Fifth Amendment from the Constitution of the United States.

WHEREFORE, this petitioner prays this Court that a Writ of Certiorari be granted because of the serious constitutional questions presented and the importance of these questions in the administration of Federal law generally.

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# APPENDIX

Filed June 10, 1954

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 12009

FRANK LEWIS, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

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Appeal from the Municipal Court of Appeals
for the District of Columbia

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Decided June 10, 1954

*Mr. Walter E. Gallagher*, with whom *Mr. Myron G. Ehrlich* was on the brief, for appellant.

*Mr. Lewis A. Carroll*, Assistant United States Attorney, with whom *Messrs. Leo A. Rover*, United States Attorney, and *Kenneth D. Wood* and *Alexander L. Stevas*, Assistant United States Attorneys, were on the brief, for appellee.

Before EDGERTON, BAZELON and WASHINGTON, Circuit Judges.

PER CURIAM: This is an appeal from a decision of the Municipal Court of Appeals, holding that the occupational tax imposed by Chapter 27A of the Internal Revenue Code, 26 U.S.C. § 3290, (1952), on the business of accepting wagers, is constitutional in its application to the District of Columbia. *United States* v. *Lewis*, 100 A.2d 40 (D.C. Mun. App. 1953). That decision is clearly correct, in view of *United States* v. *Kahriger*, 345 U.S. 22, rehearing denied, 345 U.S. 931 (1953). "Of course Congress may tax what it also forbids." *United States* v. *Stafoff*, 260 U.S. 477 at 480 (1923).

*Affirmed.*

Filed June 10, 1954

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

April Term, 1954.

No. 12009

FRANK LEWIS, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the Municipal Court of Appeals
for the District of Columbia

Before EDGERTON, BAZELON and WASHINGTON, Circuit Judges.

**Judgment**

This cause came on to be heard on the transcript of the record from the Municipal Court of Appeals, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Municipal Court of Appeals appealed from in this cause be, and the same is hereby, affirmed.

Dated: June 10, 1954.

Per Curiam.

**Act of October 20, 1951, c. 521, Title IV, § 471 (a), 65 Stat. 529. Title 26 U.S.C. §§ 3285 et seq., Chap. 27A Internal Revenue Code. (Wagering Tax Act)**

"CHAPTER 27A—WAGERING TAXES

"SUBCHAPTER A—TAX ON WAGERS

"SEC. 3285. Tax.

"(a) Wagers. There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

"(b) Definitions. For the purposes of this chapter—

"(1) The term 'wager' means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

"(2) The term 'lottery' includes the numbers game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) Amount of wager. In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

"(d) Persons liable for tax. Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers

placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

"(e) Exclusions from tax. No tax shall be imposed by this subchapter (1) on any wager placed, with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

"(f) Territorial extent. The tax imposed by this subchapter shall apply only to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (A) with a person who is a citizen or resident of the United States, or (B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

"SEC. 3286. Credits and Refunds.

"(a) No overpayment of tax under this subchapter shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax under this subchapter shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

"(b) Where any taxpayer lays off part or all of a wager with another person who is liable for tax under this subchapter on the amount so laid off, a credit against the tax

imposed by this subchapter shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid under this subchapter on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary; and no interest shall be allowed with respect to any amount so credited or refunded.

"SEC. 3287. Certain provisions made applicable.

"All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax imposed by this subchapter. In addition to all other records required pursuant to section 2709, each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable.

"Subchapter B—Occupational Tax.

"SEC. 3290. Tax.

"A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable.

"SEC. 3291. Registration.

"(a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—

"(1) his name and place of residence;

"(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

"(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter

A, the name and place of residence of each such person.

"(b) Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

"(c) In accordance with regulations prescribed by the Secretary, the collector may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

"SEC. 3292. Certain provisions made applicable.

"Sections 3271, 3273(a), 3275, 3276, 3277, 3279, and 3280 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation described in chapter 27. No other provision of subchapter B of chapter 27 shall so extend or apply.

"SEC. 3293. Posting.

"Every person liable for special tax under this subchapter shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request, to any officer or employee of the Bureau of Internal Revenue.

"SEC. 3294. Penalties.

"(a) Failure to pay tax. Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

"(b) Failure to post or exhibit stamp. Any person who, through negligence, fails to comply with section 3293, shall be liable to a penalty of $50, and the cost of prosecution. Any person who, through willful neglect or refusal, fails to comply with section 3293, shall be liable to a penalty of $100, and the cost of prosecution.

"(c) Willful violations. The penalties prescribed by section 2707 with respect to the tax imposed by section 2700 shall apply with respect to the tax imposed by this subchapter.

"Subchapter C—Miscellaneous Provisions.

"SEC. 3297. Applicability of Federal and State Laws.

"The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

"SEC. 3298. Inspection of Books.

"Notwithstanding section 3631, the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter."

(b) Technical amendment. Section 3310(f) (relating to discretion allowed the Commissioner with respect to returns and payment of tax)[53] is hereby amended by inserting after "subchapter A of chapter 25," the following: "subchapter A of chapter 27A,".

SEC. 472. EFFECTIVE DATE OF PART VII.

The tax imposed by subchapter A of chapter 27A, as added by section 471, shall apply only with respect to wagers placed on or after the first day of the first month which begins more than 10 days after the date of enactment of this Act. No tax shall be payable under subchapter B of chapter 27A, as added by section 471, with respect to any period prior to the first day of the first month which begins more than 10 days after the date of enactment of this Act. In the case of any person who is liable for tax under subchapter A of chapter 27A, as added by section 471, or who is engaged in receiving wagers for or on behalf of any person so liable, and who commenced the activity which makes him subject to such tax, or who was engaged in receiving such wagers, prior to the first day of the first month specified in the preceding sentence, the tax under

[53] U.S.C.A. § 3310(f).

subchapter B of chapter 27A, as added by section 471, shall be reckoned proportionately from the first day of such month to and including the thirtieth day of June following and shall be due on, and payable on or before, the last day of the month specified in the preceding sentence."

**Act of March 3, 1901, 31 Stat. 1330, ch. 854, § 863; June 30, 1902, 32 Stat. 535, ch. 1329; Apr. 5, 1938, 52 Stat. 198, ch. 72, § 1, Title 22, D.C. Code, Sec. 1501:**

LOTTERIES—PROMOTION—SALE OR POSSESSION OF TICKETS.

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or other device, purporting or intended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall, for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he shall be fined upon conviction of each said offense not more than $1,000 or be imprisoned not more than three years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other device shall be prima-facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery.

**Act of April 5, 1938, 52 Stat. 198, ch. 72, § 2, Title 22, D. C. Code, Sec. 1502:**

If any person shall within the District have in his possession, knowingly, any ticket, certificate, bill, slip, token, paper, writing, or other device used, or to be used, or

adapted, devised, or designed for the purpose of playing, carrying on, or conducting any lottery, or the game or device commonly known as policy lottery or policy, he shall be fined upon conviction of each said offense not more than $500 or be imprisoned for not more than six months, or both.

**Act of March 3, 1901, 31 Stat. 1330, ch. 854, § 864, Title 22, D. C. Code, Sec. 1503.**

If any person shall knowingly permit, on any premises under his control in the District, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery, or policy shop on such permises, he shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned not more than one year, or both.

**Act of March 3, 1901, 31 Stat. 1331, ch. 854, § 869; May 16, 1908, 35 Stat. 164, ch. 172, § 3, Title 22, D. C. Code, Sec. 1508.**

It shall be unlawful for any person or association of persons to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, or on any election, or any contest of any kind, or game of baseball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both.

**Constitution of the United States**
**Amendment IV—Searches and Seizures**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

" * * * nor shall be compelled in any criminal case to be a witness against himself * * *."

**Act of June 25, 1948, c. 645, 62 Stat. 701, U.S.C. Title 18, § 371.**

§ 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

53 Stat. 395, Title 26, U. S. C. § 3275.

§ 3275. List of special taxpayers for public inspection.

(a) In collector's office. Each collector shall, under regulations of the Commissioner, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality, he shall furnish a certified copy thereof, as of a public record, for which a fee of $1 for each one hundred words or fraction thereof in the copy or copies so requested, may be charged.

53 Stat. 394, Title 26, U. S. C. § 3271.

**Treasury Regulations 132, relating to excise and special tax on wagering under Chapter 27A of the Internal Revenue Code (Part 325 of Title 26), Codification of Federal Regulations, and as amended July 16, 1952.**

"SEC. 325.21. Scope of tax . . .

" (b) *A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers* with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted. It is not intended that to be engaged in the business of accepting wagers a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged in business as a salesman, and also for the purpose of the tax be engaged in the business of accepting wagers." (Emphasis supplied)

"SEC. 325.24. Person liable for tax. (a) Every person engaged in the business of accepting wagers with respect to a sports event or a contest is liable for the tax on any such wager accepted by him. Every person who operates a wagering pool or lottery conducted for profit is liable for the tax with respect to any wager or contribution placed in such pool or lottery. To be liable for the tax, it is not necessary that the person engaged in the business of accepting wagers or operating a wagering pool or lottery physically receive the wager or contribution. Any wager or contribution received by an agent or employee on behalf of such person shall be considered to have been accepted by and placed with such person.

"(b) If a person engaged in the business of accepting wagers or conducting a lottery or betting pool for profit lays off all or part of the wagers placed with him with another person engaged in the business of accepting wagers or conducting a betting pool or lottery for profit, he shall, notwithstanding such lay-off, be liable for the tax on the wagers or contributions initially accepted by him. See section 325.34 for the credit and refund provisions applicable with respect to laid-off wagers."

**Treas. Regs. 132, Section 325.25(a), "When tax attaches" reads as follows:**

"SEC. 325.25. When tax attaches.

"(a) The tax attaches when (1) a person engaged in the business of accepting wagers with respect to a sports event or a contest, or (2) a person who operates a wagering pool or lottery for profit, *accepts a wager or contribution from a bettor.* In the case of a wager or credit, the tax attaches whether or not the amount of the wager is actually collected from the bettor." (Emphasis supplied)

Treasury Reg. 132, Sec. 325.30. Returns.

(a) Every person required to pay the tax on wagers imposed by section 3285 of the Code shall prepare each month from the daily records required by section 325.32 a return, in duplicate, on Form 730 in accordance with the instructions thereon. The original return, together with the amount of the tax, shall be filed with the collector of internal revenue for the district in which is located the office or principal place of business of the person required to make the return. If such person resides in the United States, but has no office or principal place of business in the United States, the return shall be filed with the collector of internal revenue for the district in which he resides. If such person has no office, residence, or principal place of business in the United States, the return shall be filed with the Collector at Baltimore, Maryland. The return shall be filed on or before the last day of the month following that for which it is made.

(b) When the last day of the month in which a return and payment are due falls on Sunday or a legal holiday, the return may be filed and payment made on the next secular or business day. A return shall be forwarded to the collector for each month whether or not any liability has been incurred for that month. If a taxpayer ceases operations which make him liable for tax, the last return shall be marked "Final Return".

Treasury Reg. 132, Sec. 325.31. Payment of Taxes.

All taxes are due and payable to the collector of internal revenue, without assessment by the Commissioner or notice from the collector, at the time fixed for filing the return. If the tax is not paid when due, there shall be added as part

of the tax interest at the rate of 6 percent per annum from the time the tax became due to the actual date of payment or assessment, whichever is earlier. For provisions with respect to interest generally, including interest on assessments, see section 325.36.

Treasury Reg. 132, Sec. 325.32. Records.

(a) In general. (1) Every person required to pay the excise tax imposed by section 3285 shall keep, or cause to be kept, at his office or principal place of business, or, if he has no office or principal place of business, at his residence or some other convenient or safe location, such records as will clearly show as to each day's operation:

(A) The gross amount of all wagers accepted;

(B) The gross amount of each class or type of wager accepted on each separate event, contest, or other wagering medium. For example, in the case of wagers accepted on a horse race, the daily record shall show separately the gross amount of each class or type of wagers (straight bets, parlays, "if" bets, etc.) accepted on each horse in the race. Similarly, in the case of the numbers game, the daily record shall show the gross amount of each class or type of wagers accepted on each number;

(C) Separately, the gross amount of wagers—

(i) accepted directly by the taxpayer or at any registered place of business of the taxpayer (other than laid-off wagers),

(ii) accepted for his account by agents at any place other than a registered place of business of the taxpayer (other than laid-off wagers), and

(iii) accepted as laid-off wagers from persons subject to the excise tax;

(D) With respect to wagers laid off with others, the name, address, and registration number of each person with whom the laid-off wagers were placed, and the gross amount laid off with each such person, showing separately the gross amount of laid-off wagers with respect to each event, contest, or other wagering medium. For example, the daily record shall show the gross amount laid off on each horse in a race; and

(E) The gross amount of tax collected from or charged to bettors as a separate item.

(2) If a taxpayer has any agents or employees receiving wagers on his behalf, he shall maintain a separate record showing the name and address of each agent or employee, the period of employment, and the number of the special tax stamp issued to each such agent or employee.

(3) A duplicate copy of each return required by section 325.30 shall be retained as part of the taxpayer's records.

(b) Period for retaining records. The records required by this section shall, at all times, be open for inspection by internal revenue officers, and they shall be maintained for a period of at least four years from the date the tax became due.

"SEC. 325.40. Effective date of tax. The special tax imposed by section 3290 of the Internal Revenue Code is effective on and after November 1, 1951.

"SEC. 325.41. Persons liable for tax. Every person who is liable for the 10 percent excise tax imposed on wagers by section 3285 of the Internal Revenue Code and every person who is engaged in receiving wagers for or on behalf of any other person so liable is liable for the special tax.

*Example (1).* A is engaged in the business of accepting horse race bets. He employs ten persons to receive on his behalf wagers which are transmitted by telephone. He also employs a secretary and bookkeeper.

A and each of the ten persons who receive wagers by telephone are liable for the special tax. The secretary and bookkeeper are not liable unless they also receive wagers for A.

*Example (2).* B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.

B, his ten agents, and the employee who collects the wagers received on his behalf are each liable for the special tax.

SEC. 325.42. Rate and computation of tax. (a) A tax of $50 per year is imposed upon each person liable for the tax. A person engaged both in accepting wagers on his own account and in receiving wagers for or on behalf of some other person is required to purchase but one special tax stamp.

(b) The tax year begins July 1 and ends June 30. Persons commencing business between August 1 and June 30 (both dates inclusive) shall pay a proportionate part of the annual tax. "Commencing business" means the initial acceptance of a wager by a person liable for the 10 percent excise tax or the initial receiving of a wager by an agent or employee for or on behalf of some other person. Persons in business for only a portion of a month are liable for tax for the full month, i.e., a person first becoming subject to the special tax on, for example, the 20th day of a month, is liable for tax for the entire month. As the tax became effective on November 1, 1951, persons in business on that date or commencing business during that month are liable for the tax for the eight months of the year ending the following June 30.

SEC. 325.50. Registry, return, and payment of tax. (a) Every person engaging in the business of accepting wagers and liable to the 10 percent excise tax imposed by section 3285 of the Internal Revenue Code (see section 325.24 of these regulations) and every person engaged in receiving wagers for or on behalf of any person so liable shall on or before the last day of the month in which business is commenced file a return on Form 11-C. The return shall be filed with the collector of internal revenue for the district in which is located the taxpayer's office or principal place of business. If such taxpayer resides in the United States, but has no office or principal place of business in the United States, the return shall be filed with the collector of internal revenue for the district in which he resides. If the taxpayer has no office, residence, or principal place of business in the United States, the return shall be filed with the Collector of Internal Revenue, Baltimore, Md. The collector, upon request, will furnish to the taxpayer the proper forms which shall be filled out and signed as indicated therein.

(b) Every person engaged on November 1, 1951, in any business which makes him subject to the special tax, or

first engaging in such business during the month of November 1951, shall register and file a return on Form 11-C and pay the tax on or before November 30, 1951. Thereafter, such person shall register, file a return, and pay the tax on or before the last day of July of each year.

(c) Each return shall show the taxpayer's full name. A person doing business under an alias, style, or trade name shall give his true name, followed by his alias, style, or trade name. In the case of a partnership, association, firm, or company, other than a corporation, the style or trade name shall be given, also the true name of each member and his place of residence. In the case of a corporation, the true name and title of each officer and his place of residence shall be shown.

(d) Each person engaged in the business of accepting wagers on his own account shall furnish the name and address of each place where such business is conducted, together with the true name and residence address of each agent or employee accepting wagers on his behalf. Each agent or employee of a person accepting wagers shall furnish the name and residence address of each person (i.e., individual, partnership, corporation, etc.) on whose behalf such wagers are accepted.

SEC. 325.51. Records of agent or employee. Every person who is engaged in receiving wagers of a type described in section 325.21 for or on behalf of another person (at any place other than a registered place of business of such other person), shall keep a record showing for each day (1) the gross amount of such wagers received by him, (2) the amount, if any, retained as a commission or as compensation for receiving such wagers and (3) the amount turned over to the person on whose behalf the wagers were received, and the name and address of such person. The records required by this section shall, at all times, be open for inspection by internal revenue officers, and they shall be maintained for a period of at least four years from the date the wager was received.

"SEC. 325.52. Tax payment evidenced by special tax stamp. (a) Upon receipt of a return, on Form 11-C, together with remittance of the full amount of tax due, the collector will issue a special tax stamp as evidence of payment of the special tax. Such payment shall be made only

in the form of cash, certified check, cashier's check, or money order.

(b) Collectors will distinctly write or print on the stamp before it is delivered or mailed to the taxpayer the following information: (1) the taxpayer's registered name, and (2) the business or office address of the taxpayer if he has one; if not, the residence address. Special tax stamps will be transmitted by ordinary mail, unless it is requested that they be transmitted by registered mail, in which case additional cost to cover registry fee shall be remitted with the return.

(c) Collectors and their deputies are forbidden to issue receipts in lieu of stamps representing the payment of special taxes."

SEC. 325.53. Special tax stamp to be posted. The special tax stamp issued to a taxpayer as evidence of the payment of the tax shall be kept posted conspicuously in his principal place of business, except that if he has no such place of business he shall keep such stamp on his person and exhibit it, upon request, to any officer or employee of the Bureau of Internal Revenue. Any person who, through negligence, fails to post the special tax stamp in his principal place of business, or who fails to keep the special tax stamp on his person in the event he has no business address, shall be liable to a penalty of $50 and the cost of prosecution. If through willful neglect or refusal, any person fails to comply with the provisions of section 3293, he shall be liable to a penalty of $100 and the cost of prosecution.

SEC. 325.54. Certificates in lieu of stamps lost or destroyed. When a special tax stamp has been lost or destroyed, such fact shall be reported to the collector at once for the purpose of obtaining from him a certificate of payment. Such certificate shall be posted in place of the stamp; otherwise liability as above indicated for failure to post the stamp will be incurred. (See section 325.53.)

**Treasury Decision 4929, Page 96 of the Internal Revenue Cumulative Bulletin:**

"Section 463C.32. Treasury Department officers and Employees.—The officers and employees of the Treasury Department whose official duties require inspection of

returns may inspect any such returns without making a special written application. If the head of a bureau or office in the Treasury Department, not a part of the Internal Revenue Bureau, desires to inspect or to have an employee of his bureau or office inspect a return in connection with some matter officially before him for information other than tax purposes, the inspection may, in the discretion of the Secretary, be permitted upon written application to him by the head of such bureau or office, showing in detail why the inspection is desired.

"Section 463C.33. Inspection by Branch of Government Other Than Treasury Department.—Except as provided in Section 463C.34, if the head of an executive department (other than the Treasury Department), or of any other establishment of the United States Government desires to inspect or to have some other official or employee of his branch of the service inspect a return in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury, be permitted upon written application to him by the head of such executive department or other government establishment. The application shall be signed by such head and shall show in detail why the inspection is desired, the name and address of the taxpayer who made the return, and the name and official designation of the person who is desired to inspect the return. The information obtained under this section and Section 463C.32 may be used as evidence in any proceeding conducted by or before any department or establishment of the United States, or to which the United States is a party.

"Section 463C.34. Inspection by Government Attorneys. Any return shall be opened to inspection by a United States Attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The request for inspection shall be in writing and, except as provided in Section 463C.37, shall be addressed to the Commissioner and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States Attorney."

**Treasury Decision 5138, Internal Revenue Cumulative Bulletin, 1942-17-11074, Page 99:**

"Section 458.611. Inspection of Excise Tax Returns. Pursuant to the above-mentioned provisions of law, excise tax returns filed with respect to any tax imposed by Chapters 7 or 12 or 21, of Subchapter A of Chapter 29 or Chapter 30 of the Internal Revenue Code, or filed after June 16, 1933 with respect to any tax imposed by Title IV, V, or VII of the Revenue Act of 1932, or filed with respect to the tax imposed by Title IV of the Revenue Act of 1934; or by any of the above-mentioned provisions as amended, shall be open to inspection to the same extent as provided with respect to tax returns in Subpart B, and Sections 463C.31, 463C.32, 463C.33(a), 463C.34, 463C.35, 463C.36 and 463C.37 of Subpart D of Treasury Decision 4929, approved August 28, 1939 (C.B. 1939-2, 91), as amended by Treasury Decision 4991, approved July 20, 1940 (C.B. 1940-2, 92) (26 C.F.R. 1939 Sup., 458.301 to 458.307, inclusive; 458.33 to 458.337, inclusive, 1940 Sup. 458.333(a))."

**53 Stat. 394, Title 26, U.S.C., Section 3271**

§ 3271. Payment of tax

(a) Condition precedent to doing business. No person shall be engaged in or carry on any trade or business mentioned in this chapter until he has paid a special tax therefor in the manner provided in this chapter.

(b) Due date. All special taxes shall become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year, and in the latter case it shall be reckoned proportionately, from the 1st day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid

(1) Stamp. All special taxes imposed by law, including the tax on stills or worms, shall be paid by stamps denoting the tax.

(2) Assessment

**Title II. Section 3. National Prohibition Act.**

"Section 3. No person shall on or after the date when the 18th Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the Commissioner may, upon application, issue permits therefore: . . ."

"Section 6. No one shall manufacture, sell, purchase, transport or prescribe any liquor without first obtaining a permit from the Commissioner so to do except that the person may without a permit purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided and except that any person who in the opinion of the Commissioner is conducting a bona fide hospital or sanitarium engaged in the treatment of persons suffering from alcohol may under such rules, regulations and conditions as the Commissioner shall prescribe, purchase and use in accordance with the methods and use in such Institution, liquor, to be administered to the patients of such Institution under the direction of a duly qualified physician employed by such Institution * * * Nothing in this Title shall be held to apply to the manufacture, sale, transportation, importation, possession or distribution of wine for sacramental purposes or like religious rites."

"Section 35. * * * No liquor revenue stamps or tax receipts for any illegal manufacture or sale shall be issued in advance * * * "

**Article I. Section 8. Clause 17. United States Constitution**

"Section 8, Clause 17. Seat of government.

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States."

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FORM 730
Treasury Department
Internal Revenue Service

# TAX ON WAGERING

(Section 3285 of the Internal Revenue Code)

I declare under the penalties of perjury that this return (including any accompanying certificates and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signed) ..... (Date) .....

(Title) .....
(Owner, president, partner, member, etc.)

(THIS SPACE FOR NAME, ADDRESS, AND REGISTRATION NO.)

1. Gross amount of wagers accepted during month (not including lay-offs accepted)... $.....
2. Gross amount of lay-off wagers accepted during month (See instruction 3)..... $.....
3. Sum of items 1 and 2..... $.....
4. Tax (10 percent of item 3)..... $.....
5. Less credits. (No credit allowed unless supported by evidence. See instructions 4 (*a*) and (*b*))..... $.....
6. Net tax due (item 4 less item 5)..... $.....

MONTH

Penalty... $.....

Interest... $.....

Total due. $.....

ORIGINAL RETURN.—This form must be filed, with remittance, with the Collector of Internal Revenue.

IMPORTANT.—Follow instructions carefully.

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FORM 730
Treasury Department
Internal Revenue Service

# TAX ON WAGERING

(Section 3285 of the Internal Revenue Code)

This copy should be carefully preserved by the taxpayer at his place of business as a part of his records, and should at all times be available for inspection by officers of the Bureau of Internal Revenue. See paragraph "Records" under instructions.

IMPORTANT.—Return with remittance should be sent to the Collector of Internal Revenue for your district and NOT to the Commissioner of Internal Revenue at Washington, D. C. Checks or money orders should be made payable to the Collector of Internal Revenue. (See instructions, par. 2, on reverse of form.) If you have nothing to report, make notation to that effect on this form and return to the Collector of Internal Revenue. If final return is filed, the return should be marked "FINAL RETURN."

(THIS SPACE FOR NAME, ADDRESS, AND REGISTRATION NO.)

1. Gross amount of wagers accepted during month (not including lay-offs accepted)... $.....
2. Gross amount of lay-off wagers accepted during month (See instruction 3)..... $.....
3. Sum of items 1 and 2..... $.....
4. Tax (10 percent of item 3)..... $.....
5. Less credits. (No credit allowed unless supported by evidence. See instructions 4 (*a*) and (*b*))..... $.....
6. Net tax due (item 4 less item 5)..... $.....

MONTH

Penalty... $.....

Interest... $_____

Total due. $.....

DUPLICATE RETURN.—Do not send to the Collector of Internal Revenue. IMPORTANT.—Follow instructions carefully.

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## INSTRUCTIONS

**(For full instructions see Regulations 132)**

1. LAW.—The Internal Revenue Code imposes a tax upon wagers accepted on or after November 1, 1951.

Section 3285. Tax.—

(a) *Wagers.*—There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

(b) *Definitions.*—For the purposes of this chapter—

(1) The term "wager" means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) *Amount of wager.*—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(d) *Persons liable for tax.*—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) *Exclusions from tax.*—No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

(f) *Territorial extent.*—The tax imposed by this subchapter shall apply only to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (A) with a person who is a citizen or resident of the United States, or (B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

2. RETURNS AND PAYMENT OF TAX.—All taxes are due and payable without any assessment by the Commissioner or notice from the collector. Return, with remittance, covering the tax due under section 3285 for any calendar month must be in the hands of the collector of internal revenue (or his authorized representative) for the district in which the office or principal place of business of the taxpayer is located (or if he has no office or principal place of business in the United States, the Collector at Baltimore, Maryland), on or before the last day of the succeeding month; however, the Commissioner has authority under the law to require the immediate filing of a return and payment of the tax, when such action becomes necessary.

3. LAY-OFF WAGERS.—A taxpayer who accepts a lay-off wager from another taxpayer shall report such amount in item 2 of the return

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and shall retain a copy of the certificate furnished the taxpayer making the lay-off wager.

4. CREDITS—(*a*) *General credits.*—Any person who overpays the tax due with one monthly return may take credit for the overpayment against the tax due with any subsequent monthly return. If a credit is taken, a statement fully explaining the reason such credit is claimed must be attached to the return. This statement should also show whether any previous claim for credit or refund covering the amount involved, or any part thereof, has been filed; and should list each amount making up the total of the credit, monthly return on which reported, date of payment and, if the tax was paid with respect to more than 1 month, the exact amount of the credit chargeable to each month. A complete and detailed record of all credits must be kept by the taxpayer for a period of at least 4 years from the date the credit was taken. No credit shall be allowed, however (except as provided in the succeeding paragraph), whether in pursuance of a court decision or otherwise, unless the taxpayer establishes (1) that he has not collected the tax either as a separate charge or as part of the wager with respect to which it was imposed, or (2) that he has repaid the amount of the tax to the person making the wager or has secured the written consent of such person to the allowance of the credit. If the credit relates to overpayment of tax with respect to a laid-off wager, the taxpayer must also establish that the tax was not collected by any person, and if collected, that the tax has been refunded to the person who placed the wager originally, or that he has secured the written consent of such person to the allowance of the claim.

(*b*) *Lay-off credits.*—Under section 3286 (b) a credit may be allowed a taxpayer for tax paid by him or tax due with respect to any wager, if such wager was laid off with another taxpayer who is liable for tax with respect to such laid-off wager. If such a credit is taken, the taxpayer must attach to the return a statement fully explaining the reason such credit is claimed. This statement should also show whether any previous claim for credit or refund covering the amount involved, or any part thereof, has been filed; and should list each amount making up the total of the credit, monthly return on which reported, date of payment and, if the tax was paid with respect to more than 1 month, the exact amount of the credit chargeable to each month. In addition, there must be attached to the return certificates in the form prescribed in Regulations 132. A complete and detailed record of all credits must be kept by the taxpayer for a period of at least 4 years from the date the credit was taken. No interest is to be allowed with respect to any such credit.

A claim for refund may be filed in any case where a credit may be taken. If claim for refund is filed, the evidence required in the case of a credit must be submitted with the claim for refund.

5. RECORDS.—Records shall contain sufficient information to enable the Commissioner to determine the taxability of the transactions and the amount of tax due, and shall at all times be open to the inspection of internal-revenue officers. Such records, including duplicate copies of returns, shall be kept for a period of at least 4 years from the date the tax is due.

6. PENALTIES AND INTEREST.—Failure to file on time: 5 percent of the tax if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which the delinquency continues, not to exceed 25 percent in the aggregate. Failure to pay on time before assessment, interest at the rate of 6 percent per annum. Failure to pay within 10 days after issuance of notice and demand based on assessment approved by Commissioner, 5 percent penalty and interest on assessment at rate of 6 percent per annum. Severe penalties for willful failure to pay tax, keep records, file returns, or for false or fraudulent returns are imposed by the Internal Revenue Code.

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26 USC 3275 List of special taxpayers for public inspection

(a) In collector's office. Each collector shall, under regulations of the Commissioner, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality, he shall furnish a certified copy thereof, as of a public record, for which a fee of $1 for each one hundred words or fractions thereof in the copy or copies so requested, may be charged.